

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4402 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAVAGAN PARK CO-OPERATIVE HOUSING SOCIETY

Versus

AHMEDABAD URBAN DEVELOPMENT AUTHORITY

Appearance:

MR SV PARMAR for Petitioner

MR HS MUNSHAW for Respondent No. 1 & 4

Mr.L.R.Pujari, learned A.G.P. for Respondent No. 6

No one appears for other respondents despite service.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/01/99

ORAL JUDGEMENT

1. The petitioner is a Co-operative Society registered under the Gujarat State Co-operative Societies Act in the name and style of Shri Savagam Park Co-operative Housing Society. The petitioner Society entered into an agreement for purchasing lands of S.Nos.568/1+2+3 admeasuring 1 Acre and 15 Gunthas with

one Bai Diwaliben Chunthaji for construction of houses for the members of the Society in village Vejalpur. The said agreement is said to have been registered with the Sub-Registrar, Ahmedabad on 13.2.73. Before the Society could purchase the lands in question, the Gujarat Urban Land (Ceiling and Regulations) Act, 1976 came into force. The petitioner Society, therefore, approached the Government of Gujarat for exemption under S.20 of the said Act. The government of Gujarat made an order on 20.10.77 granting permission subject to certain conditions. On 14.11.77 the petitioner Society approached the City Deputy Collector for obtaining permission under S.63 of the Bombay Agricultural Lands & Tenancy Act, 1948. The case of the petitioner is that after due inquiry the City Deputy Collector was pleased to grant permission under S.63 of the Bombay Agricultural Lands and Tenancy Act, 1948 for purchase of the lands from the vendor, namely, Bai Diwaliben Chunthaji and, thereafter, the petitioner Society purchased the lands in question. In the meanwhile the Gujarat Town Planning and Urban Development Act, 1976 had also come into force and in pursuance of the said Act, the Government of Gujarat made a declaration for the development of the area; appointed a local authority as Development Authority and also appointed the Town Planning Officer and other authorities. The petitioner Society, therefore, approached the Town Planning Officer, Ahmedabad Urban Development Authority for permission under S.29 of the Act for development of the area i.e. construction of houses. The Town Planning Officer passed an order on 25.7.79 granting permission under S.29 for construction of 25 tenements. The petitioner Society then approached the Ahmedabad District Panchayat for permission to put the lands in question to non agricultural use and on 15.4.80 the District Development Officer granted N.A. permission to the Society. It is also the case of the petitioner Society that prior to the coming into force of the Gujarat Town Planning and Urban Development Act, 1976 the lands held by the petitioner Society were demarcated as revenue S.Nos.568/1, 568/2 and 568/3. Whereas the Town Planning Scheme, Vejalpur No.1 was prepared under the Gujarat Town Planning and Urban Development Act, revenue Survey numbers were given provisional Survey numbers and after some time the final plot Nos. 88 and 89 were assigned. The Society was holding the lands admeasuring 5564 Sq.mts. and on application of the Town Planning Scheme, Vejalpur No.1 the area for final Plot No.88 was reduced to 3096 sq.mts. and for final Plot No.89 it was reduced to 1911 sq.mts. Thus, the area of the lands held by the petitioner Society was reduced from 5564 sq.mts. to that of 5007 sq.mts. and for such

reduction compensation of Rs.405/- was granted under S.80 of the Gujarat Town Planning & Urban Development Act alongwith the contribution of Rs.26,956/- imposed on the Society under S.79 of the Act and with the benefit of deduction of Rs.405/- the Society was asked to make the payment of Rs.26,551/-. The petitioner Society then moved an application on 12.2.88 for grant of permission for construction of houses for its members. The Town Planning Officer under his order dt.18.4.88 granted permission subject to the condition that the tenement No.7 for the time being shall not be constructed as the lands were to be taken over and amalgamated in the final Plots Nos.88 and 89. The Ahmedabad Urban Development Authority and the Town Planning Officer, according to the petitioner, had the knowledge that some portion of the lands adjoining the Plots were to be amalgamated in plot Nos.88 and 89 and Plot Nos.88 and 89 were to be demarcated and their possession was to be handed over to the petitioner Society. Certain dispute arose between the petitioner Society and some other Societies, which have been arrayed as respondents, the facts relating to this dispute were brought to the notice of the Ahmedabad Urban Development Authority through its Chief Executive Officer and the Town Planning Officer, but no action was taken. The petitioner Society also made a representation on 16.7.90, which was followed by a reminder dt.9.8.90. A reply dt.27.9.90 was then received from the Town Planning Officer in which it was mentioned that the Town Planning Scheme, Vejalpur No.1 had been sanctioned by the State Government on 16.6.90 to be effective from 21.7.90, but the relevant record was awaited and the action for the implementation of the scheme shall be taken after the receipt of the record. The petitioner Society made another representation on 13.5.91. The Town Planning Officer then informed the petitioner on 13.12.91 that the petitioner society had been assigned final Plot Nos.88 and 89, which had been demarcated and the boundary stones had been planted by the Town Planning Officer and that the possession of the lands, which were not included in the final plot Nos.88 and 89, may be handed over to the Town Planning Officer within 10 days from the receipt of this letter. This letter has been placed on record as Annexure 'H'. However, no further action was taken by Ahmedabad Urban Development Authority and the Town Planning Officer and the Sarpanch of the Vejalpur Gram Panchayat issued the notice dt.26.6.92, which had been placed on record as Annexure 'I'. The petitioner Society felt aggrieved against the notice Annexure 'H' issued by the Town Planning Officer as also the notice Annexure 'I' issued by the Sarpanch of the Vejalpur Gram Panchayat and filed the present petition raising the grievance that the

lands of the final plot Nos.88 and 89 be demarcated and that the petitioner Society was willing to hand over the lands required as per the Town Planning Scheme and it seeks to enforce the duty cast on the respondent - Town Planning Officer for demarcation and handing over the possession of the final plot Nos.88 and 89 of village Vejalpur, Town Planning Scheme No.1 allotted to the Society and thus seeks the implementation of the Scheme. The prayers made in the Special Civil Application are as under:-

"(A) Issue writ of mandamus or any other appropriate writ, direction or order directing the respondent-Ahmedabad Urban Development Authority, its officers and the respondent-Town Planning Officer to issue fresh notice in lieu of the notice Annexure 'H' supplying material particulars and to demarcate the lands of final Plots Nos.88 and 89, plant the boundary stones at proper places and hand over possession of the same to the petitioner-society ;

(B) declare that the notice Annexure 'I' issued by the Sarpanch,Vejalpur Gram Panchayat is illegal, null and void;

(C) issue writ of mandamus or any other appropriate writ, direction or order on the Sarpanch, Vejalpur Gram Panchayat, as also the officers and employees of the Vejalpur Gram panchayat restraining them from forcibly interfering with the peaceful possession of the lands held by the petitioner-Society;

(D) grant such and further relief in the facts and circumstances of the case;

(E) costs of this petition be provided for.

8. Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to restrain the respondent-Sarpanch,Vejalpur Gram Panchayat from interfering with the peaceful possession of the petitioner-Society and also restrain the respondent-Ahmedabad Urban Development Authority and its officers, the respondent-Town Planning Officer, employees and servants from taking possession of any land from the petitioner-Society, unless and until the area of final plots Nos.88 and 89 are demarcated,boundary stones are planted at proper places and its possession is handed over to the petitioner-Society."

2. The present Special Civil Application was filed on 30.6.92. Notice was issued on 7.7.92 by the Division Bench on which date the appearance had also been entered on behalf of respondent No.5 and it was also stated on behalf of respondent No.5 that no action pursuant to the notice dt.22.6.92 Annexure 'I' shall be taken without the permission of the Court and an order to maintain status quo as on that date was granted. Thereafter, when the matter came up before the Court on 3.8.92 after hearing the petitioner and respondent Nos.1 to 9 the following order was passed by the Division Bench:-

"Mr.Munshaw, learned advocate appearing for respondents Nos.1 & 4,states that respondent No.1 is implementing the preliminary Town Planning Scheme No.1 of Vejalpur and for that notices under Sections 67 & 68 of the Gujarat Town Planning Act are issued.

Mr.Parmar,learned advocate appearing on behalf of the petitioner, states that the petitioner Society would remove newly constructed wall on or before 18th August 1992 and obstruction to the passage of rain water would be removed on or before 6th August 1992.

Mr.J.B.Shah,learned advocate appearing on behalf of respondents Nos.1 & 3 Shri Sant Ugam Society and Santkrupa Co-operative Housing Society respectively, states that respondents Nos.2 & 3 would remove the construction which is in violation of the preliminary Town Planning Scheme No.1 of Vejalpur if directed by AUDA.

Similarly, Mr.H.L.Patel, learned advocate appearing on behalf of respondents Nos.5,7,8 & 9 Sarpanch, Vejalpur Gram Panchayat, Sankarbaug Co.Op.Society, Azam Co-Op. Housing Society & Scheduled Castes Post & Telegraph Employees Co-Op. Housing Society respectively, states that respondents Nos.7 to 9 would also remove the construction which is in violation of the preliminary Town Planning scheme No.1 of Vejalpur if directed by AUDA within fifteen days from the receipt of the letter of AUDA.

In view of the aforesaid statements of the learned advocates of the parties, respondent No.1 is directed to immediately demarcate the area which is required to be handed over to the petitioner - Society as per the preliminary Town Planning Scheme No.1 and the area which is required to be removed by the respondents Nos.2,3,7,8 & 9 Societies within fifteen days from

to-day.

S.O. to 18th August 1992.

(M.B.Shah,J)

(R.D.Vyas,J)"

3. The respondent No.1 was thus directed to immediately demarcate the area which was required to be handed over to the petitioner Society as per the preliminary Town Planning Scheme Vejalpur No.1 and the area which was required to be vacated by the respondents Nos.2,3,7,8 and 9 Societies within 15 days. Thereafter, the matter came up before the Court on 27.8.92 on which date the Division Bench recorded the statement of the learned counsel for the respondents Nos.1 and 4 with regard to the demarcation of the property with boundary stones which are to be placed on or before 1.9.92 and further that respondents Nos.1 and 4 would take appropriate steps in accordance with law as early as possible for implementation of the Scheme in question with regard to final Plots Nos.88, 89, 90, 91, 118 and 121/A. The contents of this order dt.27.8.92 are reproduced as under:-

"Mr.Munshaw, learned advocate for respondents Nos.1 & 4, states that with regard to the demarcation of the property, boundary stones are to be placed on or before 1st September 1992. He further states that respondents Nos.1 & 4 would take appropriate steps in accordance with law as early as possible for implementation of preliminary Town Planning Scheme of Vejalpur with regard to Final Plots Nos.88, 89, 90, 91, 118 & 121/A.

The learned advocates for the parties state that they would co-operate fully with the Authority.

In view of the aforesaid statement, respondents Nos.1 & 4 are directed to take appropriate steps in accordance with law as early as possible for implementation of preliminary Town Planning Scheme of Vejalpur with regard to Final Plots Nos.88, 89, 90, 91, 118 & 121/A.

S.O. to 25th September 1992.

(M.B.Shah,J)

(R.D.Vyas,J)"

4. The matter again came up before the Court on 6.10.92 because the time was sought on behalf of respondents Nos.1 & 4 for complying with the statement made on the earlier date i.e. 27.8.92. It was recorded on 6.10.92 that till this date the statement made before the Court on 27.8.92 on behalf of respondents Nos.1 and 4 had not been fully complied with. The counsel for the respondents Nos.1 & 4 requested for time to place on record the circumstances under which the statement could not be complied with and the extension of time was also sought. The matter was posted for 8.10.92 and on 12.10.92 time was granted to comply with the directions as indicated in the order dt.27.8.92. The extension was granted upto 30.11.92 on 12.10.92. It appears that even then the statement, which was made before the Court, was not complied with and on 15.2.93 when the matter came up before the Court, Rule was issued and interim relief was granted in terms of para 8.

5. The matter has today come up for final hearing. The learned counsel for the petitioner has informed that even uptill now the Scheme has not been implemented and the directions, which have been given by the Court in terms of the statement as were made on behalf of the respondent Nos.1 and 4, have not been complied with. Mr. Munshaw appearing on behalf of respondents Nos.1 and 4 has not been in a position to controvert this statement made by Mr. Parmar on behalf of the petitioner.

6. In the facts and circumstances of this case, this Court finds that there is no justification with the respondents for not discharging the duties cast upon them under the Statute and no justification whatsoever has been given either in writing or orally even at the time of the arguments as to why the Scheme has not been implemented except the fact that some other Societies have raised unauthorised constructions. If at all any other Societies have made any unauthorised construction, there are appropriate provisions in the Act empowering the respondents to take appropriate action to remove such encroachment. Merely because the respondents have failed to give effect to these provisions and have not been able to remove the unauthorised encroachment, it is no answer to the failure of the statutory duty cast upon them and for not complying with the statements which were made before the Court on more than one occasions. Whereas the Division Bench has passed the orders, referred to hereinabove, after hearing all the sides, particularly the orders dt.3.8.92 and 27.8.92, this order has also to be read in the light of the aforesaid orders.

7. The learned counsel for the petitioner has submitted that the petitioner Society has already removed the newly constructed wall as was given out on behalf of the petitioner before the Court on 3.8.92. It is also submitted on behalf of the petitioner Society that if at all any unauthorised obstruction created by the petitioner Society is pointed out by the respondents Nos.1 and 4 against the implementation of the Town Planning Scheme, the same shall be immediately undone by the petitioner Society simultaneous to the implementation of the Scheme as a whole and the petitioner Society stands committed to comply with any such requirement and the petitioner Society is only interested in getting the land, which was allotted to it for the purpose of construction of the houses for its members in the final Plots Nos.88 and 89 and the petitioner Society does not stand in the way of the implementation of the Town Planning Scheme as a whole. While making reference to the statements made in Para 3.5 of the petition, the learned counsel for the petitioner has also submitted that the payment of a sum of Rs.26,551/-, which was required to be made by the petitioner, shall also be made in case the same has not already been paid by now and the petitioner Society undertakes to make this payment within a period of two months from today in case the same has not been paid so far. In this view of the matter, no further orders are required to be passed and subject to the undertaking of the petitioner Society with regard to the depositing of the amount of Rs.26,551/- and the undertaking not to obstruct the implementation of the Town Planning Scheme as a whole, the Rule is made absolute in terms of the orders dt.3.8.92 and 27.8.92 passed by this Court. The respondents Nos.1 and 4 shall carry out the aforesaid orders dt.3.8.92 read with the order dt.27.8.92 as early as possible but in no case later than 30.4.99. No order as to costs.